

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96M-122

MAY 21 4 12 PM '96

61398

In re Applications of

WT DOCKET NO. 96-41

LIBERTY CABLE CO., INC.

For Private Operational Fixed
Microwave Service Authorization
and Modifications

File Nos:

708777

WNTT370

708778, 713296

WNTM210

708779

WNTM385

New York, New York

708780

WNTT555

708781, 709426, 711937

WNTM212

709332

(NEW)

712203

WNTW782

712218

WNTY584

712219

WNTY605

713295

WNTX889

713300

(NEW)

717325

(NEW)

O R D E R

Issued: May 16, 1996

Released: May 20, 1996

Bench rulings made at the Prehearing Conference on May 15, 1996 were as follows:

Protective Order

Counsel for the private parties were instructed to present to the Presiding Judge a signature page and modifications to Page 7 and Attachment B of the Stipulated Protective Order. It was presented and signed on May 16, 1996.

Depositions

The Bureau and Time Warner shall serve Notices of Depositions as soon as possible. Copies of the Notices shall be furnished to the Presiding Judge by 12 noon on May 17, 1996. The time for the completion of discovery was extended to May 31, 1996.

This instruction was given in the context of a discussion about a deposition schedule. The Notices of Depositions for the five persons identified by Bureau counsel will serve as the beginning of such a schedule. The Bureau is awaiting further information on the identification of Liberty employees which will be provided by Liberty on May 16 at 4:00 p.m. While not required at the Conference, definitive deposition schedules of the Bureau, Time Warner and Cablevision (joint if possible) shall be furnished by 12 noon on May 21, 1996. Liberty will not be taking any depositions.

Completion of adequate discovery by that date requires the cooperation of Liberty which it has promised since the commencement of this proceeding. To the extent that it has control over deposition witnesses, Liberty agrees to make them available. Informal agreement in scheduling depositions is essential. Washington, D.C. has been established as the place for the depositions and full cooperation on accommodations for timely completion must be made available.

Bureau Witness

Liberty has identified a Commission employee as a possible witness whom Liberty is seriously considering seeking to call to testify on procedures at the Bureau's Gettysburg office. By **May 23, 1996**, Liberty shall file and serve a motion seeking leave to call the Bureau witness which shall include a detailed statement of the expected testimony, a description and copy of any document that may be used in the examination, an explanation as to why it would not be adequate to stipulate to the subject, and the relevance of the testimony to the issues in this case. The Bureau and the other parties shall respond by **May 29, 1996**.

Leave To File

The Bureau's Motion For Leave To File Wireless Telecommunications Bureau's Consolidated Replies To Bartholdi Cable Company, Inc.'s Opposition To Motion To Enlarge And Freedom New York, L.L.C.'s Petition For Limited Intervention and Opposition To Motion To Enlarge Issues filed on May 14, 1996, was granted.

Agreements Relevant To Requested Issues

Copies of agreements between Liberty and Freedom (and/or Freedom affiliates) for transfer of Liberty assets and the providing of Liberty's services must be submitted to the Presiding Judge **by 12 noon on May 17, 1996**. If there is no claim of privilege, copies will be simultaneously furnished to the parties and their treatment of the documents shall be governed by the Stipulated Protective Order.¹ If there is a claim of privilege,¹ there must be submitted a clear statement of the basis for any privilege asserted. The non-Liberty parties will respond **by May 20, 1996**.

Pleading Cycle

By **May 22, 1996**, Liberty and Freedom will file and serve Oppositions to the real party-in-interest issue that is sought by the Bureau. Reply pleadings of the Bureau and Time Warner shall be filed and served **by May 29, 1996**.

There is a similar Protective Order that is being negotiated between the Bureau and Liberty. There shall be no delay in furnishing copies of the Agreements to the Bureau even if there has been no Stipulation signed. But the Bureau shall treat the documents as confidential until ordered otherwise.

¹ It is difficult to conceive of a claim of privilege for a business document. It is recognized that confidential treatment may be requested and there are sufficient procedures in place that will provide Liberty with protection. Therefore, it is expected that all parties will have copies of the agreements by May 17th.

Limited Intervention

Freedom is granted limited intervention as a party for the purpose of responding to the requests to add the issues regarding its agreements with Liberty/ Bartholdi. Freedom's counsel shall file a Notice of Limited Appearance and copies of pleadings shall be served on Freedom's counsel.

New Procedural Dates

To accommodate the needs of counsel for the non-Liberty parties, there are permitted the following extensions of the procedural dates (Cf. Order FCC 96M-36):

- | | |
|---------------|--|
| May 31, 1996 | - Complete all discovery. |
| June 11, 1996 | - Exchange affirmative direct case exhibits.
If oral direct testimony is to be presented, the witnesses shall be fully identified and a complete summary of their expected testimony shall be provided. |
| June 14, 1996 | - Notification of witnesses desired for cross-examination |
| June 18, 1996 | - Objections to witness notification. |

The hearing date set for June 25, 1996, remains unchanged. In view of the considerations for confidentiality and the anticipated scope of document exhibits, the first day is expected to be limited to an exhibit session.

SO ORDERED

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

See Order FCC 96M-123, issued May 16, 1996.

Hearing exhibits must be serially numbered, separately paginated, and assembled in a binder with a tab preceding each document. A prefix will be used to identify the party sponsoring the exhibit. Each exhibit (or series of exhibits of a common sponsor) must be accompanied by affidavit or declaration under penalty of perjury of a sponsoring witness. If official notice is to be requested of materials in Commission files, the materials shall be assembled, tabbed, identified by source, assigned an exhibit number, and exchanged on the exchange date.

Notifications and objections may be communicated by facsimile or by telephone call confirmed the same day in writing or by facsimile.

Copies of this Order were faxed to counsel on the date of issuance.